IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. E/2862/06

(Arising out Order-in-Original No. 140 to 142/Commr(AH)/05 dated 14.07.2005 passed by the Commissioner of Central Excise & Service tax, Raigad)

For approval and signature:
Hon'ble Shri S.S. Garg, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE & ST, Raigad — Appellant

Vs.

Hanil Era Textiles Ltd. — Respondent

Appearance:

Shri Ajay Kumar, Commissioner (AR) for the appellant
None for the respondent

CORAM:
Hon'ble Shri S.S. Garg, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing : 31.01.2018
Date of decision : 31.05.2018

O R D E R No: A/86587/2018

Per: C J Mathew

Three show cause notices were issued to M/s Hanil Era Textiles Ltd, a 100% export oriented scheme unit operating under the Foreign Trade Policy of the Government of India. Pertaining to the periods from April 2000 to September 2001, October 2001 to March 2003 and April 2003 to December 2003, these pertained to misuse of the facility of duty-free procurement of fuel and lubricants under notification no. 53/97-Cus dated 3rd June 1997 and notification no. 1/95-CE dated 4th January 1995 for imported goods and indigenously sourced goods.

2. Commissioner of Central Excise (Adjudication), Mumbai vide order-in-original no.140 -142/COMMR (AH)/05 dated 14th July 2005 dropped the demands partly owing to bar of limitation arising coverage by previous notices that were ultimately decided in favour of the assessee by the Tribunal and the whole for lack of any evidence of evasion and lack of clarity in raising the demand. Aggrieved by this, Revenue is in appeal.

3. We have heard Learned Authorized Representative and none having appeared for the respondent, we also perused the records at length.

4. M/s Hanil Era Textiles Ltd had been permitted to generate power for its own use and to wheel out surplus power to other units subject to payment of duties foregone on the procurement of such fuel as was attributable to power that was not used by them. The charge against the respondent was that power was sold outside without discharge of duty liability. Respondent claimed that they had procured sub-standard and unconventional inputs on which they had not availed the benefit of exemption.

5. Revenue challenges the bar of limitation in relation to the first of notices. Though admitting proceedings were indeed launched against the assessee that was decided against Revenue, it is their contention that the earlier dispute was related to eligibility for clearance of power into the domestic tariff area. We cannot agree with Revenue on this. The issue was one of power produced allegedly with exempt inputs and, being so, cannot be distinguished from the present dispute, though not on eligibility, relating to the availment of the very same exemption for the same inputs.

6. On perusal, we find no allegation of suppression or non-accountal of procurement of fuel or consumables against certificates entitling them to duty-free procurement. In these circumstances, power could have been generated with duty-paid material. Whether these are sub-standard, as

claimed by respondent, or prime, as alleged by Revenue, there is no scope for demand of duty on duty-paid inputs.

7. The notices allege that the claim of sub-standard procurement is intended to conceal procurement of inputs on paper to pass on MODVAT credit to other entities. This, if true, has nothing to do with the notifications which have been cited in the notice. As pointed out by the original authority, these are unsubstantiated by any evidence.

8. On scrutiny of the allegations, it would appear that a case was attempted to be made out that respondent had manipulated the records to supress efficiency of production of power and thus divert the surplus power by claiming to have used fuel procured from outside. The power transmitted out of the plant was closely monitored by electricity transmission agency to ensure discharge of wheeling charges. The notices have failed to establish that any norms existed for comparison with actual deployment of inputs for generation of power.

9. In these circumstances, we find no reason to interfere with the impugned order. Appeal of Revenue is dismissed.

(Pronounced in Court on 31.05.2018)

(S.S. Garg)
Member (Judicial)

(C J Mathew)
Member (Technical)

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